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State Task Force Activities

A number of state task forces have been created to respond to problems in the guardianship and conservatorship court processes. Task forces tend to be created only after highly critical media reports highlighting individual cases that typically involve the abuse or financial exploitation of protected persons by their guardian/conservator. The following offers a summary of more recent state task force activities.

Arizona

In 2010, the [Arizona Supreme Court](#) established the Committee on Improving Judicial Oversight and Processing of Probate Matters. The Committee released its [Final Report](#) in 2011. Many of the Committee's recommendations have since been put into place through legislation (see [Judge Mroz's PowerPoint presentation](#) for an overview of statutory changes). Recommendations offered by the Committee follow.

The Supreme Court should...	
Recommendation 1	Advocate for the legislature to expand the statutory "standby" guardianship provisions in the probate code.
Recommendation 2	Advocate for the legislature to include a statutory provision in the probate code that exclusively applies to incapacitated minors approaching adulthood.
Recommendation 3	Add a rule to the Probate Rules that requires funded, ongoing, unannounced post-appointment visitation of wards and protected persons.
Recommendation 4	Add a Probate Rule directing the superior court to create and conduct a funded program for random audits of conservatorship accountings to validate the accuracy of annual or biennial accounts currently required in all adult conservatorship matters.
Recommendation 5	Explore funding sources for conducting periodic visitations, reporting, training, and random audits.
Recommendation 6	Develop statewide uniform training requirements for major participants in guardianship and conservatorship cases in specified ways
Recommendation 7	Give priority to the development of automated case management systems that will substantially improve probate case monitoring and oversight by efficient and cost-effective means.
Recommendation 8	Develop uniform, interactive and dynamic electronic probate forms through AZTurboCourt or another online website that will allow documents to be electronically generated and filed. The court should prioritize phasing in AZTurboCourt for probate matters.
Recommendation 9	Adopt statewide fee guidelines for attorneys and fiduciaries paid from an estate.
Recommendation 10	Add a Probate Rule or ask the legislature to include a statutory provision in the probate code, that requires attorneys, fiduciaries and others seeking fees from an estate in guardianship or conservatorship cases to do so within a specific time frame or be barred from doing so, absent good cause.
Recommendation 11	Ask the legislature to adopt a fee-shifting statute specifically applicable to probate matters. The court should also promulgate a corresponding Probate Rule.

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Recommendation 12	Ask the legislature to adopt a statute mandating arbitration for disputes concerning the reasonableness of fees of fiduciaries and all attorneys paid from the estate.
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California

In 2006, the California Supreme Court created the Probate Conservatorship Task Force to make recommendations to the Judicial Council for reforms and improvements to the conservatorship process. The task force's final report was submitted to the Judicial Council in 2007 and includes 85 recommendations. In 2008, the Administrative Director of the Courts noted the implementation status of each recommendation. Several laws have been passed based on the task force's recommendations; however, California's budget crisis has impacted the ability of the courts to make the necessary reforms to the conservatorship system.

Nebraska

In 2010, the Nebraska Supreme Court created the Joint Review Committee on the Status of Adult Guardianships and Conservatorships in the Nebraska Court System. The Committee issued its final report in 2010. Based on these recommendations, the legislature passed a number of laws that give the Nebraska courts new tools to assess the qualifications of prospective guardians and conservators for vulnerable persons, accurately document and track the assets of protected persons, and rigorously monitor the performance of guardians and conservators throughout the duration of their appointments.

Committee recommendations were divided into three categories: (1) changes that can be implemented with little or no fiscal impact; (2) changes that can be implemented over time but may require increased funding; and (3) systemic restructuring that requires further study. The final report included recommendations for the Supreme Court, the State Court Administrator, and the judiciary. The Supreme Court recommendations are offered below.

The Supreme Court should...	
Recommendation 1	Review and adopt forms to be used in all guardian and/or conservator cases statewide.
Recommendation 2	Adopt a court rule or support a statutory change regarding required local and federal background checks including Abuse and Neglect Registries, Adult Protective Services and Child Protective Services findings, and credit checks.
Recommendation 3	Adopt a court rule requiring that filing requirements for guardians and conservators be included on their Letters.
Recommendation 4	Adopt a court rule requiring all courts to hand out the Quick Reference Guide with sample forms attached to guardians and conservators with their Letters.
Recommendation 5	Adopt a court rule requiring that inventories be sent, by certified mail and regular mail, to all interested parties.
Recommendation 6	Adopt a court rule requiring courts/clerks to make sure all interested parties are on the Affidavit of Mailing for the inventories, annual accounting, and condition of ward reports that are filed with the court.
Recommendation 7	Adopt a court rule requiring that all accountings be reviewed by auditors.
Recommendation 8	Adopt a court rule requiring the Statement of Assets that is filed with the Accounting be reviewed by an auditor or probate supervisor and/or magistrate to determine if the bond previously set is adequate.
Recommendation 9	Adopt a court rule requiring bank statements and brokerage reports to be submitted with all accountings.
Recommendation 10	Adopt a court rule or support amendments to existing statute to require inventories be filed in guardianship cases.
Recommendation 11	Adopt a court rule or support a statutory change to require inventories to be filed in guardianship and/or conservatorship cases within 30 days of appointment.
Recommendation 12	Adopt a court rule requiring all initial inventories filed with the court be reviewed by the judge to determine if a bond needs to be set and/or the previously set bond is adequate.
Recommendation 13	Adopt a court rule requiring the guardian and/or conservator to file their Letters with the Register of Deeds in any county where the ward has real property or an interest in real property.

Recommendation 14	Adopt a court rule requiring an updated inventory be filed every year and it should be reviewed by the auditor or the judge to determine if the bond is still sufficient.
Recommendation 15	Adopt a court rule requiring that in the absence of any interested parties, the court should appoint a Guardian Ad Litem for the ward.
Recommendation 16	Adopt a court rule prohibiting ATM withdrawals or cash back on debit transactions without prior court approval.
Recommendation 17	Adopt a court rule requiring guardians and conservators to register with the central database each case they are appointed on.
Recommendation 18	Further study the need to enhance and implement regular judicial education for both judges and court staff on the full range of complexity of guardianship and conservatorship cases.
Recommendation 19	Establish a standing commission to focus on guardian and conservator issues, including further study emerging best practices for court case management to address the relevant interests of protecting vulnerable adults' wellbeing and estate and property; judicial specialization and rotation; docket timeliness and management; court monitoring and auditing; and economic, geographical, and case volume conditions.

South Carolina

In 2009, the South Carolina Supreme Court Chief Justice created the Task Force on State Courts and the Elderly to "study and make recommendations to the Supreme Court to improve court responses to elder abuse, adult guardianships and conservatorships." The final report was issued in 2010. The Task Force's recommendations follow:

- That the Supreme Court replace the Task Force with a Commission on State Courts and the Elderly;
- That the Commission emphasize a variety of non-legislative strategies to the extent practicable in effecting necessary or desirable change;
- That the Commission adopt a philosophy of "agile management" characterized by use of "moving target" goals; pilot and demonstration programs; process re-engineering; and innovative funding and staffing arrangements;
- That the Commission undertake a program to educate and build consensus among the judiciary, the bar, other court constituencies, state and county officials, nongovernmental service organizations, and the public.

Utah

In Utah, the Ad Hoc Committee on Probate Law and Procedure submitted its final report to the Utah Judicial Council in 2009. The committee's recommendations follow:

- Modernize the definition of incapacity to focus on functional limitations. Require proof of incapacity (among other grounds) to appoint a conservator or a guardian. Enforce the requirement to prove incapacity by clear and convincing evidence.
- Consider in every case ordering that the respondent be evaluated by a physician or psychiatrist and by a court visitor. Adopt uniform forms on which to report the results of a clinical and social evaluation.
- Appoint a lawyer to represent the respondent in conservatorship cases, as is now done in guardianship cases.
- Require the respondent's lawyer to be from a roster of qualified lawyers maintained by the Utah State Bar. Establish minimum qualifications for the roster. Appropriate funds to pay the respondent's lawyer if the respondent cannot afford a lawyer and does not qualify for existing programs.
- Respondent's lawyer should be an independent and zealous advocate, rather than a *guardian ad litem*.
- If the court determines that a petition resulted in an order beneficial to the respondent, and if funds are available in the estate, permit the court or conservator to pay the reasonable and necessary expenses, costs and attorney fees from the estate.
- Require the respondent to attend all hearings unless the respondent waives that right or unless the court finds that attending the hearing would harm the respondent. Take steps to accommodate the special needs of respondents at court hearings.
- Appoint a certified court interpreter if the respondent does not understand English.
- Refer protective proceedings to mediation. The mediation community should develop training for mediating protective proceedings, including especially the skills and accommodations necessary when mediating with a person of potentially diminished capacity.
- Consider appointing a commissioner to hear probate matters, including guardianship and conservatorship cases, in districts with sufficient caseload.
- With a few exceptions, classify guardianship and conservatorship records as private.
- Require the petitioner to show that alternatives less restrictive than appointing a fiduciary have failed or that they would not be effective. Presume, rather than favor, limited guardianships. Adopt laws, procedures and forms that make limited guardianships a realistic option.
- Require the fiduciary to use the "substituted judgment" standard for decision making on behalf of the respondent except in those limited circumstances in which the "best interest" standard may be used.
- Adopt special procedures for temporary emergency appointments.
- Eliminate "school guardianships."
- Permit a person to nominate, rather than appoint, a guardian for self, a child or a spouse, and to petition to confirm the nomination during one's lifetime.
- Require the fiduciary to write a management plan and file it with the court.
- Appoint a coordinator to develop a program of volunteer court visitors.
- Regulate the profession of guardian through the Division of Occupational and Professional Licensing. Require private guardians and conservators to disclose any criminal convictions that have not been expunged.
- Develop training for lawyers, judges and court staff. Develop outreach and assistance to guardians, conservators, respondents and the public.
- Unify the laws regulating guardians and conservators except where there is sound policy to differentiate them.